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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1301

RICHARD L. BORDEN, ET AL.,
Petitioners,

v.

DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENTS IN OPPOSITION

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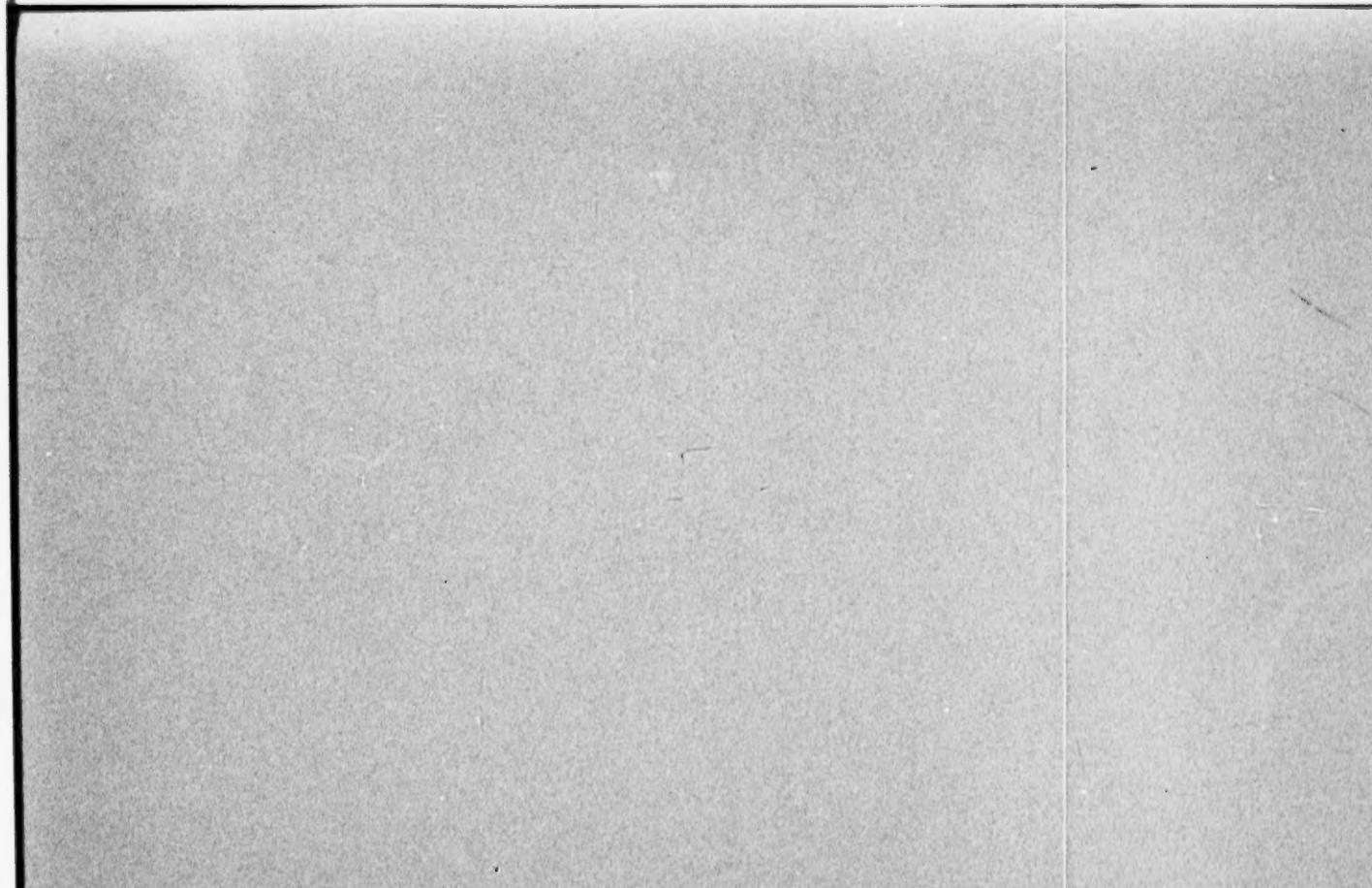


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OPINIONS BELOW

The Order of the Court of Appeals of Maryland dated November 26, 1973, denying a Writ of Certiorari to the Court of Special Appeals of Maryland is printed in Appendix A of

the Petition. The opinion of the Court of Special Appeals, dated October 9, 1973, is printed in Appendix A of the Petition and is reported in 19 Md. App. 112, 309 A.2d 773. The unreported opinion of the Circuit Court for Anne Arundel County dated June 25, 1973, which was appealed to the Court of Special Appeals of Maryland, is also printed in Appendix A of the Petition.

JURISDICTION

The Order of the Court of Appeals of Maryland denying the Writ of Certiorari to the Court of Special Appeals of Maryland was entered on November 26, 1973. Within ninety days thereafter, Petitioners filed with this Court a Petition for Writ of Certiorari to the Court of Appeals of Maryland pursuant to 28 U.S.C. §1257(3). Respondents submit that this Court lacks jurisdiction to review by Writ of Certiorari the Order entered by the Court of Appeals of Maryland because there are adequate and independent state grounds to support the Order.

QUESTIONS PRESENTED

1. Whether there are adequate and independent state grounds to support the judgment of the Court of Special Appeals of Maryland denying monetary relief to Petitioners who have not followed or exhausted State administrative procedures established to remedy improper assessments, but who have instead initiated an original action in a Maryland Circuit Court.

2. Whether the Court of Special Appeals of Maryland correctly applied the rule in *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1946), that, if State taxing authorities have consistently, systematically and intentionally singled out a taxpayer for discriminatory treatment for which

there is no State remedy, the State itself must remove the discrimination.

STATUTES INVOLVED

The statutes involved are the following Maryland tax statutes in the Annotated Code of Maryland (1969 Replacement Volume and 1973 Cumulative Supplement):

Volume 7, Article 81
- Section 2(20)
- Section 14(b)(1)
- Section 213
- Section 214(a)
- Section 214C
- Section 229(l)
- Section 232(8) (a) and (b)
- Section 255(a) and (b)
- Section 256(a)

These statutes are printed in Appendix A of this Brief in Opposition. Article 15 of the Declaration of Rights of the Constitution of the State of Maryland, and Section 1 of the Fourteenth Amendment to the Constitution of the United States are printed at pages 21a-24a of Appendix B of the Petition.

STATEMENT OF THE CASE

The Petitioners are property owners in Anne Arundel or Talbot Counties whose properties were reassessed for *ad valorem* property tax purposes in either 1971 or 1972. They initiated this suit seeking a declaratory judgment that these reassessments were not made in compliance with §232(8) (a) and (b) of Article 81 of the Annotated Code of Maryland 1969 Replacement Volume and 1973 Cumulative Sup-

plement) (Code), which requires all real property to be reviewed annually for the purposes of *ad valorem* tax assessments and, when necessary, reassessed. Petitioners alleged that, although their property was reviewed and reassessed in 1971 or 1972, other property in the two counties was not and that, therefore, both the reassessments of their properties and the taxes levied on those reassessments were void and illegal or, in the alternative, that any tax increases resulting from those reassessments were void and illegal.

For relief, Petitioners requested the Circuit Court for Anne Arundel County, *inter alia*, to enjoin Respondents from collecting property taxes for the fiscal year 1973-74 in Anne Arundel and Talbot Counties on the basis of the alleged illegal assessments and to require the State Department of Assessments and Taxation to refund any tax collected for fiscal 1972-73 based on the challenged reassessments or, in the alternative, to refund any increase in the tax resulting from the reassessments. Petitioners also requested the Circuit Court to enjoin the Supervisors of Assessments for Anne Arundel and Talbot Counties from placing Petitioners' 1971 and 1972 reassessments on the tax rolls or from certifying the tax rolls, and to enjoin the collectors of taxes for Anne Arundel and Talbot Counties from preparing and issuing tax bills for fiscal 1973-74 based on the alleged illegal assessments or, in the alternative, from preparing and issuing tax bills that reflected increases due to the reassessments in either 1971 or 1972.

The Respondents moved for summary judgment on the ground that, regardless of the outcome on the merits, Petitioners were not entitled to the requested relief.

On June 25, 1973, the Circuit Court for Anne Arundel County (Wray, J.), granted Respondents' motion for summary judgment, holding that Petitioners were not entitled to a refund of their taxes or to injunctive relief, since they

had failed to comply with the procedures established by the General Assembly of Maryland for obtaining tax refunds and for challenging their own reassessments. The judgment of the Circuit Court was affirmed by the Court of Special Appeals of Maryland on October 9, 1973. A petition for a writ of certiorari to the Court of Special Appeals was denied by the Court of Appeals of Maryland on November 26, 1973.

On disposition of the issues related to assessment practices which were not presented for decision by Respondents' motion for summary judgment, the Circuit Court for Anne Arundel County granted summary judgment to Petitioners upon a finding that, although the State assessing authorities were complying with Section 232(8)(a), they were "falling short of enforcing a continuing method of real property reassessment that Section 232(8)(b) requires." This the Circuit Court attributed to a lack of funding.[1]

There was no finding that the Respondents intentionally or arbitrarily sought to discriminate against Petitioners or that Petitioners' reassessments were made in violation of the Fourteenth Amendment. Neither Petitioners nor the Respondents appealed this decision.

ARGUMENT

I.

THE FAILURE OF PETITIONERS TO EXHAUST ADMINISTRATIVE REMEDIES FOR CHALLENGING *AD VALOREM* PROPERTY TAX ASSESSMENTS PROVIDES AN ADEQUATE AND INDEPENDENT STATE LAW GROUND FOR DENYING PETITIONERS' REQUEST FOR MONETARY RELIEF.

A.

The common law rule in Maryland permits a taxpayer to obtain a refund of taxes previously paid only if and as expressly provided by statute. *See Rapley v. Montgomery*

[1] Appendix A of the Petition at 19a and 19a n. 7.

County, 261 Md. 98, 110-111, 274 A.2d 124, 130 (1971). In the case of refunds for *ad valorem* property taxes, sections 213, 214(a) and 214C of Article 81 of the Maryland Code, provide the exclusive procedure for obtaining a refund. Petitioners, however, failed completely to utilize these statutory procedures and, instead, brought an original suit in the Circuit Court for Anne Arundel County seeking a refund of *ad valorem* property taxes. It was in this context that the Court of Special Appeals, citing sections 213 and 214 of Article 81 of the Code, affirmed the holding of the lower court that a Maryland Circuit Court lacks jurisdiction in an original action to order a refund of *ad valorem* taxes previously paid. *See* Appendix A of the Petition at 7a. This decision clearly raises no federal question.

B.

The General Assembly of Maryland has established procedures by which a taxpayer may challenge the assessment of his property. Petitioners whose property was reassessed had a right, under §255(a) of Article 81 of the Code, to demand a hearing before the Supervisors of Assessments of Anne Arundel and Talbot Counties, respectively, "as to the assessment of any property . . ." At that hearing, they could have made their case for the reduction of their assessments. Section 255(b) of Article 81 of the Code provides a right to a further hearing before the final assessing authority of the county "as to the . . . refusal to . . . reduce . . . any such assessment". Furthermore, §256(a) of Article 81 provides for an appeal to the Maryland Tax Court for anyone "aggrieved because of . . . refusal . . . to reduce . . . any assessment", and an adverse decision from the Maryland Tax Court may be appealed to the Court of Appeals of Maryland pursuant to §229(l) of Article 81 of the Code.

These statutory procedures permit a taxpayer to obtain the type of relief sought by Petitioners. In *Sears, Roebuck & Company v. State Tax Commission of Maryland*, 214 Md. 550, 136 A.2d 567 (1957), the taxpayer, following the prescribed administrative procedures, challenged the assessment of certain personal property on the ground that the State Tax Commission, in assessing the property, did not consider the effect of inflation in its determination of assessable value of personal property, but did consider its effect on the assessable value of real property and granted an allowance for that effect. The Court of Appeals of Maryland found that this was an *intentional and arbitrary* discrimination and, on that basis rejected the State's contention that the taxpayer's only remedy was to seek an upward revision in the assessments of other taxpayers, holding that "the state itself must remove such discrimination". 214 Md. at 559, 136 A.2d at 572.

Sears, Roebuck & Company, supra, clearly indicates that State remedies are adequate and that a taxpayer may obtain the type of relief sought by these Petitioners if he can demonstrate that the taxing authorities have singled him out for discriminatory treatment.[2] The taxpayer must, however,

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[2] Petitioners contend that, in order to fall within the holding of *Sears, Roebuck & Company, supra*, it is necessary to show that their assessments are "too high", and that they are barred from relief if they can only show that other assessments are discriminatorily low. There are, however, no reported Maryland cases in which a court has denied a taxpayer the relief required by *Hillsborough Township, supra*, in the face of a finding that the assessing authorities purposefully discriminated against a taxpayer by assessing other property too low. It is submitted that the term "too high" does not refer to the statutory assessment standard of "full cash value" (§14(b)(1) of Code Art. 81), but rather to an assessment which is "too high" because it was arrived at by employing discriminatory assessments methods or techniques. *See Boothe Computer Corporation v. State Department of Assessments and Taxation*, 2 CCH Md. State Tax Rptr. ¶200-605 (Md. Tax Court 1970), in which the Maryland Tax Court held that the practice of the State Department of Assessments and Taxation

follow those procedures established by the legislature for challenging an assessment. The rule in Maryland is that a court of equity will interfere with the collection of taxes only "when no appellate tribunal has been created with power to remedy the wrong." *Commissioners of Allegheny County v. The Union Mining Co.*, 61 Md. 545, 548 (1884). Rather than follow the prescribed procedures for challenging their assessments, Petitioners brought an original action in the Circuit Court in an effort to have those assessments reduced. The Petitioners failure to challenge their real property assessments as prescribed by statute, then, provides an adequate and independent State law ground for denying Petitioners *any* monetary relief.

II.

THE QUESTION OF WHETHER PETITIONERS ARE ENTITLED TO THE RELIEF REQUIRED BY *TOWNSHIP OF HILLSBOROUGH v. CROMWELL*, 326 U.S. 620 (1946), IS MOOT, SINCE THERE WAS NO FINDING THAT THE REASSESSMENT OF PETITIONERS' PROPERTY WAS MADE IN VIOLATION OF THE FOURTEENTH AMENDMENT.

Respondents moved for, and were granted, a summary judgment on the ground that, *regardless* of the outcome on the merits as to the validity of the challenged assessment practices, Petitioners were not entitled to the monetary relief they requested, as distinct from whatever declaratory or

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of "assessing leased equipment owned by a manufacturer-lessor at manufacturer's cost, while assessing the same equipment owned by a non-manufacturer-lessor at the purchase price is intentional, arbitrary" and in violation of the 14th Amendment. For relief the Maryland Tax Court, citing *Sears, Roebuck & Co., supra*, and *Hillsborough Township, supra*, ordered the State Department of Assessments and Taxation to reassess petitioner's property "on the same basis as that of similar property in the same subclassification i.e., at manufacturer's cost". 2 CCH Md. State Tax Rptr. ¶200-605 at 10,490. *See also Xerox Corporation v. State Department of Assessments and Taxation*, 2 CCH Md. State Tax Rptr. ¶200-604 (Md. Tax Court 1973).

injunctive relief they might have been entitled to against the State assessing authorities. It is from that decision which Petitioners are here seeking a writ of certiorari. Subsequent to the decision on the question of relief against these Respondents, the Circuit Court for Anne Arundel County decided the issues related to assessment practices raised by Petitioners. The court found that the Respondents were complying with the review requirements of §232(8)(a), but that they were "falling short" of complying with the annual reassessment requirements of §232(8)(b), which the court attributed to a lack of funds for the necessary number of assessors.[3] There was *no* finding that the Respondents intentionally or arbitrarily sought to discriminate against Petitioners or that the reassessment of Petitioners' property was made in violation of the Fourteenth Amendment. Neither the Petitioners nor the Respondents have appealed the Circuit Court's decision. Since there was no finding that the Respondents violated the Fourteenth Amendment, the question of whether the relief available in such cases is consistent with the holding in *Hillsborough Township, supra*, is now moot.

III.

THE COURT OF SPECIAL APPEALS OF MARYLAND CORRECTLY HELD THAT PETITIONERS WERE NOT ENTITLED TO REDUCTIONS OF THEIR ASSESSMENTS IN THE ABSENCE OF A SHOWING THAT THEY HAD BEEN SINGLED OUT FOR DISCRIMINATORY TREATMENT IN THE REASSESSMENT OF THEIR PROPERTIES AND THAT THERE WAS NO ADEQUATE STATE REMEDY.

The Court of Special Appeals held that *Hillsborough Township, supra*, did not compel the relief requested by Petitioners. The court based its decision on the fact that the State of Maryland provides adequate administrative procedures by which a taxpayer may challenge his assessment and the fact that there was "no showing of a purposeful

[3] *See* Appendix A of the Petition at 19a.

discrimination against . . . [taxpayers]". *See* Appendix A of Petition at 8a. It should be noted, moreover, that Petitioners have not challenged the administrative remedies provided by the State of Maryland for challenging property tax assessments.

In *Hillsborough Township, supra,* the taxpayer sought a declaratory judgment in Federal court that the assessment of her personal property was unconstitutional on the ground that the taxing authorities had "consistently, systematically and intentionally singled out Respondent for discriminatory treatment in the assessments of taxes . . ." 326 U.S. at 622. There was, however, no allegation that the assessments of other taxpayers were improper. Noting that the New Jersey courts had consistently held that a taxpayer who had been *singled out for discriminatory taxation* may *not* obtain a reduction in his own assessment, but must seek an upward revision of the assessments of other members of his class, the Court held that the existing state remedy was inadequate and that the state itself was required to remove the discrimination.

The Maryland cases cited by the Court of Special Appeals in its decision are consistent with the holding in *Hillsborough Township, supra.* In *Sears, Roebuck & Company v. State Tax Commission of Maryland, supra,* the court, finding that the assessment was intentionally and arbitrarily discriminatory, rejected the state's contention that the only remedy available to the taxpayer was an action to raise the assessments of other taxpayers. The court, citing *Hillsborough Township, supra,* held that the state itself must remove the discrimination.[4] On the other hand, if there is no showing of a *purposeful or intentional discrimination in the assessment of a taxpayer's property,* the Court of Appeals of Maryland has held that the taxpayer's proper remedy is to seek an

[4] *See also Boothe Computer Corporation v. State Department of Assessments and Taxation, supra; Xerox Corporation v. State Department of Assessments and Taxation, supra.*

upward revision in the assessments of other taxpayers if those assessments were not properly made. *See State Tax Commission v. Chesapeake & Potomac Telephone Co. of Baltimore City*, 193 Md. 222, 235, 66 A.2d 477, 482 (1949).[5] The present case falls into the latter category, since (1) there was no showing of purposeful discrimination and (2) there are adequate administrative remedies.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[5] *Baltimore Steam Packet Co. v. State Tax Commission*, 161 Md. 9, 155 A. 158 (1931) and *Schley v. Lee*, 106 Md. 390, 67 A. 252 (1907), both of which were decided prior to *Hillsborough Township, supra*, do not stand for the proposition that the only remedy available in the case of a discriminatory assessment is an action to raise the assessments of other taxpayers, as is suggested at page 6 of the Petition. *Baltimore Steam Packet Co.* involved a challenge to a tax exemption and not an assessment, and *Schley* was an action to enjoin the Tax Commissioner from using certain assessment procedures.

APPENDIX A — STATUTES

Article 81 of The Annotated Code of Maryland (1969 Replacement Volume and 1973 Cumulative Supplement)

§2(20).

The phrase "date of finality" means the date as of which assessments become final for the taxable year next following, subject only to correction as herein authorized. The phrase "semi-annual date of finality" means the date as of which assessments shall be made for all real property becoming assessable up to that time and after the next previous date of finality. The phrase "quarterly date of finality" means the date as of which assessments may be made for all real property becoming assessable up to that time and after the next previous semi-annual date of finality. These dates are as specified in §29A of this article.

§14.

(b) — Except as hereinafter provided: (1) All real property directed in this article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value less an allowance for inflation, if in fact inflation exists.

§213.

Whenever any person shall claim to have erroneously or mistakenly paid into the treasury of the State more money for ordinary taxes than was properly and legally chargeable to or collectible from such person he may file with the Comptroller of the State a written demand for the refund thereof, which, if approved by the Comptroller, shall be refunded out of any funds appropriated for such purpose, or, if no such funds are available, shall be certified to the Governor for inclusion in the next budget. In the case of ordinary State taxes erroneously or mistakenly paid to any collector or other agent authorized by law to collect such taxes, claims for refund may be made upon such collector or other agent who, if authorized by the State Comptroller may refund the same out of any State funds in the hands of such collector or other agent. No refund shall be made, approved or certified in any case where it appears that the assessment

upon which such taxes were levied and collected has become final and has not been modified on appeal as provided in this article, and the only basis for the refund is a claim that such assessment was erroneous or excessive; provided, however, that this prohibition shall not apply to any case in which a person has paid a tax bill which is erroneous by reason of any mere mathematical, mechanical or other clerical error by the taxing authority, exclusive of any error of valuation, in the computation, calculation or recordation of the assessment upon which said tax bill is based. Such claim for refund shall be in such form, verified in such manner, contain such information and be supported by such documents as may be prescribed by regulations of the Comptroller, and shall be filed within three years from the date of the payment of the ordinary taxes for which refund is requested.

§214.

(a) Generally. — Whenever any person shall claim to have erroneously or mistakenly paid to the county commissioners of any county, or to the collector for such county, or to the collector or other official of any municipality, or to the mayor and city council of Baltimore, or the collector for Baltimore City, more money for ordinary county or city taxes than was properly and legally chargeable to or collectible from such person, he may file with the collector in any county or municipality or the appeal tax court in Baltimore City, a written application for the refund thereof, and if approved by such collector, or the said appeal tax court the said county commissioners or the said municipal officials or the mayor and city council of Baltimore shall levy and pay to such person any money that was so paid. No refund shall be made or approved in any case where it appears that the assessment upon which such taxes were levied and collected has become final and has not been modified on appeal as provided in this article, and the only basis for the refund is a claim that such assessment was erroneous or excessive; provided, however, that this prohibition shall not apply to any case in which a person has paid a tax bill which is erroneous by reason of any mere mathematical, mechanical or other clerical error by the taxing authority, exclusive of any error of valuation, in the computation, calculation or

recordation of the assessment upon which said tax bill is based. Such claim for refund shall be in such form, verified in such manner, contain such information and be supported by such documents as may be prescribed by regulations of the county commissioners or ordinance of any municipality or ordinance of the mayor and city council of Baltimore and shall be filed within three years from the date of the payments of the ordinary taxes for which refund is requested.

§214C.

Appeal from final determination of a claim for refund of ordinary taxes. Any person filing a claim for refund of ordinary taxes under §213 or §214 of this subtitle, or the supervisor of assessments or the Director of the State Department of Assessments and Taxation, as the case may be, on behalf of the State or county or city, may appeal to the Maryland Tax Court from the final determination of the refunding authority. Said appeal shall be taken within 30 days from the date of mailing of the notice of its determination by said authority.

§229(l).

Any party to the proceedings may appeal from the Court's final order directly to the Court of Appeals.

§232(8).

(a) To maintain and enforce a continuing method of assessment review, so that all assessable real property in every county and Baltimore City shall be reviewed at least once each year. Property shall be reviewed in the discretion of the Director of the Department, by the use of property description cards, property location maps, land classification maps, unit value maps, land use maps, zoning maps, records of new construction, sales records, building cost data, private appraisals, or periodic surveys of assessment ratios or by the use of any other materials or information considered by the Director or the Department to be reliable aids in determining property value. In conducting this review, it shall not be necessary that properties be reviewed individually and separately; for the purpose of conducting this review, properties may be grouped into areas, grouped according to character or use, or grouped in any

other manner which the Director or the Department considers to be necessary or helpful to the efficient conduct of said review. The Director and the Department shall have the power, at any time, to order and enforce a review of any properties, if such properties have not been reviewed within one year; and it shall be the duty of the Director to order and enforce a review of any properties upon receipt of a request to do so from the final assessing authority for the county or city in which such properties are located.

(b) To maintain and enforce a continuing method of real property reassessment, so that all assessable real property in every county and Baltimore City shall be properly reassessed annually whenever the annual review required in subparagraph (a) hereof discloses a change in value. In addition, the Director and the Department shall have the power, at any time, after consultation with the county commissioners in the several counties, or the appeal tax court where such exists, or the board of municipal and zoning appeals in Baltimore City as the case may be, to order and enforce a reassessment of any properties, if it appears, after a consideration and evaluation of the results of the annual assessment review required by subparagraph (a) hereof, that the existing assessments upon such properties are erroneous because they are significantly greater or less than the assessments on other similar properties possessing comparable values.

§255.

(a) Before supervisor of assessments. — With respect to any property assessed locally, any taxpayer, or city, or the Attorney General or Department may demand a hearing before the supervisor of assessments or their respectively designated representatives, as to the assessment of any property or any unit of tax value, or as to the increase, reduction, or abatement of any such assessment, or as to the classification thereof, for the next ensuing year. Except as provided in §29(f) of this article, no demand for a hearing shall be granted under this subsection unless answer or protest to a notice as to assessments was made, in the counties or Baltimore City with the supervisor of assessments within twenty days from the date of such notice, or unless application for

revaluation or reclassification as to an existing or proposed assessment was made in the counties with the supervisor of assessments before the date of finality for the taxable year in question, or in Baltimore City before October first preceding the taxable year in question; provided however where the taxpayer is required to report personal property in such detail as to show the cost or market value thereof, but the taxpayer fails to report accurately the cost or other data required to establish market value, and the taxpayer claims that the property is assessed at a higher valuation than it would be if it had been reported accurately, then a demand for a hearing shall be granted if such answer or protest to the notice as to the assessment on such property is made within three years from the date of such notice.

(b) Before property tax assessment appeal board. — With respect to any property assessed locally, any taxpayer, or city, or the Attorney General or Department on behalf of the State may demand a further hearing before the property tax assessment appeal board as to the assessment of any property or any unit of tax value, or as to the increase, reduction or abatement of, or refusal to increase, reduce or abate, any such assessment, or as to the classification thereof, made by the initial assessing authority for the next ensuing year. No demand for a hearing shall be granted under this subsection unless made within thirty days from the date of a final notice from the initial assessing authority as set forth in §29(g) of this article.

§256.

(a) In general. — Any taxpayer, any city, or the Attorney General or Department on behalf of the State, or a supervisor of assessments as provided in §234 of this article, or the county commissioners of any county where an appeal tax court has been duly created claiming to be aggrieved because of any assessment or classification, or because of any increase, reduction, abatement, modification, change or alteration or failure or refusal to increase, reduce, abate, modify or change any assessment, or because of any classification or change in classification, or refusal or failure to make a change,

by any final assessing authority under §255 of this article, may by petition appeal to the Maryland Tax Court therefrom as provided in §229 in this article, and said Court shall hear and determine all such appeals within sixty days from the entry thereof. Such appeal shall be taken either (a) within thirty days after the date of the action or failure or refusal to act complained of, or (b) if an address shall have been filed with the final assessing authority appealed from by any person or corporation demanding a hearing as in §255 provided, then by the person giving such address within thirty days from the date of mailing of the notice of the action by the final assessing authority to the person and address so given or (c) if the appellant is a supervisor of assessments, such appeal shall be taken within thirty days from the date the final assessing authority sends notice of its action, in writing, by mail or otherwise, to the supervisor of assessments. No appeal on behalf of a taxpayer shall be allowed under this section from a failure or refusal to abate, reduce, or reclassify an existing assessment unless application in writing for such action shall have been filed by the appellant with the final assessing authority appealed from within the time limited for the filing of a demand for a hearing by §255 of this article.